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Attorney for Plaintiff,
KNS International, LLC

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF CALIFORNIA

KNS International, LLC., a Utah Limited
Liability Company,

Plaintiff,

vs.

EBuys, a California corporation, Shoe
Metro, a fictitious business name registered
in San Diego County, APPAREL SAVE, a
fictitious business name registered in San
Diego County, and DISCOUNT COAST, a
fictitious business name registered in San
Diego County,

Defendant.

Case No.: **'15CV2691 JLS NLS**

**PLAINTIFF'S COMPLAINT FOR
EQUITABLE DAMAGES AND
INJUNCTIVE RELIEF:**

- 1. FEDERAL TRADEMARK
INFRINGEMENT;**
- 2. FEDERAL UNFAIR
COMPETITION;**
- 3. FEDERAL TRADEMARK
DILUTION;**
- 4. TRADEMARK DILUTION UNDER
CALIFORNIA LAW;**
- 5. COMMON LAW TRADEMARK
INFRINGEMENT.**

JURY TRIAL DEMANDED

Plaintiff KNS INTERNATIONAL, LLC in support of its claims against Defendants
EBUYS, INC., SHOE METRO, SHOEMETRO COM, APPAREL SAVE, and DISCOUNT
COAST (collectively "Defendants") alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff files this action against Defendants for trademark infringement, trade

1 dress infringement, and trademark dilution under the Lanham Trademark Act of 1946, 15 U.S.C.
2 §1051 et seq. (the "Lanham Act") and related claims under the statutory and common law of the
3 state of California. This Court has subject matter jurisdiction over the claims alleged in this
4 action pursuant to 28 U.S.C. §§ 1331, 1338.

5 2. This Court has personal jurisdiction over Defendants because Defendants conduct
6 business within this judicial district.

7 3. This action arises out of wrongful acts by Defendants within this judicial district
8 and Plaintiff has been injured in this judicial district by Defendants' alleged wrongful acts. Venue
9 is proper in this district pursuant to 28 U.S.C. § 1391 because the claims asserted arise in this
10 district.

11 **THE PARTIES**

12 4. Plaintiff KNS International, LLC ("KNS") is a limited liability company
13 organized and existing under the laws of the state of Utah with an office and principal place of
14 business in Draper, Utah. KNS designs, manufactures and markets footwear for many different
15 brands, including the well know "Journee Collection" and "Brinley Co." brands (the "KNS
16 Brands"), which are identified by their registered trademarks and stylized variations thereof
17 (collectively, the "KNS Marks").

18 5. Upon information and belief, Defendant EBuys, Inc. ("EBuys") is a corporation
19 duly organized and existing under the laws of the State of California with an office and principal
20 place of business at 8960 Carroll Way, Suite 100, San Diego CA 92121.

21 6. Defendants Shoe Metro, Shoemetro Com, Apparel Save, and Discount Coast are
22 all fictitious business name registered in San Diego County to Defendant EBuys and therefore
23 each have the same office and principal place of business as Defendant EBuys.

24 7. KNS is unaware of the names and true capacities of Defendants, whether
25 individual, corporate and/or partnership entities, named herein as DOES 1 through 10, inclusive,
26 and therefore sues them by their fictitious names. KNS will seek leave to amend this complaint
27 when their true names and capacities are ascertained. KNS is informed and believes and based
28

thereon alleges that said Defendants and DOES 1 through 10, inclusive, are in some manner responsible for the wrongs alleged herein, and that at all times referenced, each was the agent and servant of the other and was acting within the course and scope of said agency and employment.

8. KNS is informed and believes, and based thereon alleges, that at all relevant times herein, Defendants and DOES 1 through 10, inclusive, knew or reasonably should have known of the acts and behavior alleged herein and the damages caused thereby, and by their inaction ratified and encouraged such acts and behavior.

9. KNS further alleges that Defendants and DOES 1 through 10, inclusive, have a non-delegable duty to prevent or not further such acts and the behavior described herein, which duty Defendants and DOES 1 through 10, inclusive, failed and/or refused to perform.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

A. KNS' Brands and Trademarks

10. KNS has become well known throughout the United States and elsewhere as a source of high quality footwear products identified at least by its "Journee Collection" and "Brinley Co." brand footwear ("KNS Brands").

11. KNS Brands products are distributed and sold to consumers through large online retailers, in retail locations, and through directly an Internet website owned by Plaintiff-ww.myfashioncorner.com.

12. KNS Brands are not sold to third-parties unless authorized by KNS.

B. Defendants' Infringing Activities

13. The present lawsuit arises from Defendants' manufacture, distribution, advertisement, marketing, offering for sale, and/or sale of footwear that infringe upon KNS Brands trademarks by using the KNS Brands and KNS Marks upon its products without authorization.

14. Upon information and belief, KNS hereon avers that Defendant EBuys, including through its fictitious business names, is a retailer of various types of consumer products, ranging from apparel, footwear, and home merchandise. Products from said EBuys are available to

1 consumers nationwide and can be purchased through Defendants, who are located in this judicial
2 district, or on their respective websites. See Exhibit A, Emails from Amazon.com showing
3 Defendants offering its infringing products for sale by connecting them to Plaintiff's legitimate
4 products (the "Infringing Products").

5 15. Upon information and belief, Defendants have designed, manufactured and/or
6 caused to be manufactured, distributed, offered for sale, and/or sold Infringing Products to
7 various wholesalers and/or retailers nationwide.

8 16. Indeed, Infringing Products have been offered for sale and/or sold by EBuys,
9 including through its fictitious business names, and have been made available for purchase to
10 consumers in this judicial district.

11 17. Upon information and belief, Defendants may have sold additional products that
12 may infringe upon KNS' trademarks. KNS may seek leave to amend as additional information
13 becomes available through discovery.

14 18. Given the widespread popularity and recognition of KNS and because Defendants
15 expressly connected its Infringing Products with the KNS' products (See Exhibit A), KNS avers
16 and hereon alleges that Defendants had knowledge of KNS' trademarks and have intentionally
17 utilized said trademarks on their own brand of products in an effort to pass them off as if they
18 originated, are associated with, are affiliated with, are sponsored by, are authorized by, and/or are
19 approved by KNS.

20 19. KNS is informed and believes and hereon alleges that Defendants are competitors
21 and have copied KNS' trademarks in an effort to exploit KNS' reputation in the market.

22 20. Furthermore, Defendant EBuys, including through its fictitious business names,
23 has used the trademarks "Journee Collection" and "Brinley Co." a federally registered trademark
24 owned or leased by KNS, and similar designations in connection with its sale and advertising of
25 competitive products and Infringing Products, through the use of said mark in Internet search
26 engine advertising, when EBuys has no rights to use such mark and such mark is not descriptive
27 of EBuys's products.

28 21. KNS is informed and believes and hereon alleges that Defendants have acted in

bad faith and that Defendants' deceptive acts have misled and confused and were intended to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants' Infringing Products with KNS, or as to the origin, sponsorship, or approval of Defendants' Infringing Products by KNS.

FIRST CLAIM FOR RELIEF

(Trademark Infringement of "Journee Collection" and "Brinley Co." Marks against Defendant
EBuys - 15 U.S.C. § 1114)

22. KNS incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

23. KNS owns or leases several trademark registrations in the United States and has many applications pending in connection with various goods and services that it sells and/or provides in connection with its well known KNS' Brands and United States trademark registrations for the word marks "Journee Collection" and "Brinley Co." (hereinafter "KNS Marks") include but are not limited to the following:

U.S. Reg. No.	Reg. Date	International Class
4693989	March 3, 2015	014
3501706	September 16, 2008	018
3504377	September 23, 2008	025
4282335	January 29, 2013	014
4124586	April 10, 2012	018, 025

24. Registrations for the KNS Marks are valid and subsisting. At all times relevant hereto, the KNS Marks has been continually used by KNS in most of the world and in the United States, on or in connection with the manufacture, distribution, sale and promotion of its products.

25. KNS Marks are nationally recognized, including within the Central District of California, as being affixed to goods and merchandise of the high quality and coming from KNS.

26. The KNS Marks are distinctive when applied to high-quality footwear and related

1 merchandise, signifying to the purchaser that the products come from KNS and are manufactured
2 to KNS' quality standards.

3 27. EBuys, including through its fictitious business names, sells its items through its
4 website - www.shoemetro.com ("EBuys Website") - which is accessible to customers
5 nationwide, including those within this judicial district.

6 28. The EBuys Website includes on each of its pages a product search bar that enables
7 internet users to perform a targeted search within the EBuys Website. When the words "Journee
8 Collection" or "Brinley Co." is typed in the product search bar alone or in connection with a
9 search phrase on the EBuys Website, boots that look confusingly similar and/or nearly identical
10 to KNS boots, including Infringing Products, are retrieved as search results. None of these boots
11 however are actually KNS products. Such use by EBuys of the KNS Marks creates initial interest
12 confusion, directing consumers to products confusingly similar to KNS' products.

13 29. For example, even as recently as November 16, 2015, entering the search term
14 words "Journee Collection" and then "Brinley Co." into the search bar on the EBuys Website
15 retrieves several results depicting boots very similar to those sold by KNS (See Exhibit B
16 attached hereto). None of the products can be authentic as KNS alone controls the distribution of
17 its products.

18 30. EBuys's offering of products in connection with the KNS Marks improperly trades
19 off the goodwill KNS has established in the KNS Marks in order to improperly attract consumers
20 to EBuys's competitive products.

21 31. Customers familiar with KNS' boots and looking for same by entering the search
22 term "Journee Collection" or "Brinley Co." on the EBuys Website would likely believe,
23 incorrectly, that the confusingly similar products retrieved as a result thereof being offered is
24 somehow endorsed, sponsored or affiliated with KNS.

25 32. Furthermore, once a consumer types in "Journee Collection" or "Brinley Co." on
26 the EBuys Website and retrieves the results, even if the consumer recognizes that the products
27 offered are not authentic KNS products, the consumer may purchase confusingly similar products
28 from EBuys. In this manner, KNS is harmed by weakening the association of the KNS Marks

1 with KNS' products, and such consumers are likely to instead purchase confusingly similar
2 competitive products.

3 33. EBuys's unauthorized use of the KNS Marks in interstate commerce and in
4 advertising to promote goods that are not KNS products constitutes trademark infringement and
5 counterfeiting under Section 32 of the Lanham Act, 15 U.S.C. § 1114 of KNS' Marks.

6 34. EBuys's use of the KNS Marks is without KNS' permission or authority and is in
7 total disregard of KNS' rights to control its trademarks.

8 35. EBuys's infringing activities are likely to lead to and result in consumer confusion,
9 mistake or deception, and are likely to cause the public to believe that KNS has produced,
10 sponsored, authorized, licensed or is otherwise connected or affiliated with EBuys's commercial
11 and business activities, all to the detriment of KNS.

12 36. Upon information and belief, EBuys has knowledge of KNS' rights in the KNS
13 Marks. Further, upon information and belief, EBuys's acts are deliberate, willful and intended to
14 confuse the public as to the source of EBuys's goods or services and to injure KNS and reap the
15 benefit of KNS' goodwill associated with the KNS Marks.

16 37. As a direct and proximate result of EBuys's infringing conduct, KNS has been
17 injured and will continue to suffer irreparable injury to its business and reputation unless EBuys
18 is restrained by this Court from infringing KNS' KNS Marks.

19 38. KNS has no adequate remedy at law.

20 39. In light of the foregoing, KNS is entitled to injunctive relief prohibiting EBuys
21 from using KNS' Marks, or any marks confusingly similar thereto, for any purpose, and to
22 recover from EBuys all damages, including attorneys' fees, that KNS has sustained and will
23 sustain as a result of such infringing acts, and all gains, profits and advantages obtained by
24 EBuys as a result thereof, in an amount not yet known, as well as the costs of this action and up
25 to treble damages pursuant to 15 U.S.C. § 1117(a) and (b), or statutory damages pursuant to 15
26 U.S.C. § 1117(c).

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1 48. EBuys's acts described above have diluted and continue to dilute KNS' unique and
2 distinctive KNS Marks. These acts violate the Lanham Act, have injured and, unless immediately
3 restrained, will continue to injure KNS, causing damage to KNS in an amount to be determined
4 at trial, as well as irreparable injury to KNS' goodwill and reputation associated with the value of
5 the KNS Marks.

6 49. Upon information and belief, EBuys's infringing activities began long after KNS'
7 Marks became famous.

8 50. Upon information and belief, EBuys acted knowingly, deliberately and willfully
9 with the intent to trade on KNS' reputation and to dilute the value of KNS' Marks. EBuys's
10 conduct is willful, wanton and egregious.

11 51. KNS has no adequate remedy at law to compensate it fully for the damages that
12 have been caused and which will continue to be caused by EBuys's infringing acts, unless they
13 are enjoined by this Court.

14 52. In light of the foregoing, KNS is entitled to injunctive relief prohibiting EBuys
15 from using KNS' Marks, and to recover all damages, including attorneys' fees, that KNS has
16 sustained and will sustain, and all gains, profits and advantages obtained by EBuys as a result of
17 its infringing acts alleged above in an amount not yet known, and the costs of this action.

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19 **FOURTH CLAIM FOR RELIEF**

20 (Trademark Dilution against Defendant EBuys in Violation of California Law)

21 53. KNS incorporates herein by reference the averments of the preceding paragraphs
22 as though fully set forth herein.

23 54. The KNS Marks is distinctive in the state of California by virtue of its substantial
24 inherent and/or acquired distinctiveness, extensive use in the state of California, and the
25 extensive advertising and wide spread publicity of the mark in the state of California.

26 55. The actions of EBuys complained of herein are likely to injure the business
27 reputation and dilute the distinctive quality of the KNS Marks, which is famous.

28 56. The foregoing acts of EBuys constitute dilution and injury to business reputations

1 in violation of the California Business and Professions Code.

2 57. The conduct herein complained of is extreme, outrageous, fraudulent, and was
3 inflicted on KNS in reckless disregard of KNS' rights. Said conduct is despicable and harmful to
4 KNS and as such supports an award of exemplary and punitive damages in an amount sufficient
5 to punish and make an example of the EBuys and to deter it from similar such conduct in the
6 future.

7 58. By reason of the foregoing, KNS is being damaged by EBuys's unauthorized use
8 of the KNS Marks in the manner set forth above, and will continue to be damaged unless EBuys
9 is immediately enjoined under Section 14247 of the California Business and Professions Code
10 from using the KNS Marks.

11 59. KNS will be irreparably injured by the continued acts of EBuys, unless such acts
12 are enjoined.

13 60. EBuys's acts have damaged and will continue to damage KNS, and KNS has no
14 adequate remedy at law.

15 61. In light of the foregoing, KNS is entitled to injunctive relief prohibiting EBuys
16 from using the KNS Marks for any purpose and recovery of up to three times its profits from, and
17 up to three times all damages suffered by reason of, EBuys's wrongful use of the KNS Marks.

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19 **FIFTH CLAIM FOR RELIEF**

20 (Common Law Trademark Infringement against All Defendants)

21 62. KNS incorporates herein by reference the averments of the preceding paragraphs
22 as though fully set forth herein.

23 63. KNS owns and enjoys common law trademark rights in the KNS Marks in
24 California and throughout the United States.

25 64. Defendants' unauthorized use of KNS' Marks has caused and is likely to cause
26 confusion as to the source of Defendants' products, all to the detriment of KNS.

27 65. Defendants' infringing acts in appropriating rights in KNS' intellectual property
28 intended to capitalize on KNS' goodwill associated therewith for Defendants' own pecuniary

1 gain. KNS has expended substantial time, resources and effort to obtain an excellent reputation
2 for the KNS brands. As a result of KNS' efforts, Defendants are now unjustly enriched and are
3 benefiting from property rights that rightfully belong to KNS.

4 66. Defendants' acts are willful, deliberate, and intended to confuse the public and to
5 injure KNS.

6 67. KNS has no adequate remedy at law to compensate it fully for the damages that
7 have been caused and which will continue to be caused by Defendants' infringing conduct, unless
8 it is enjoined by this Court.

9 68. The conduct herein complained of was extreme, outrageous, fraudulent, and was
10 inflicted on KNS in reckless disregard of KNS' rights. Said conduct was despicable and harmful
11 to KNS and as such supports an award of exemplary and punitive damages in an amount
12 sufficient to punish and make an example of Defendants, and to deter them from similar such
13 conduct in the future.

14 69. In light of the foregoing, KNS is entitled to injunctive relief prohibiting
15 Defendants from infringing the KNS Marks, and to recover all damages, including attorneys'
16 fees, that KNS has sustained and will sustain, and all gains, profits and advantages obtained by
17 Defendants as a result of their infringing acts alleged above in an amount not yet known, and the
18 costs of this action.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff KNS Outdoor Corporation respectfully prays that this Court
22 enter judgment in its favor and against Defendants as follows:

23 1. A Judgment that Defendant EBuys has infringed KNS' Marks and that said
24 infringement was willful;

25 2. An order granting temporary, preliminary and permanent injunctive relief
26 restraining and enjoining Defendants, their agents, servants, employees, officers, associates,
27 attorneys, and all persons acting by, through, or in concert with any of them, are hereby
28 temporarily, preliminarily, and permanently enjoined from using KNS' Marks, including, but not

1 limited to:

2 (a) using the KNS Marks or the words "Journee Collection" or "Brinley Co."
3 (however spelled, whether capitalized, abbreviated, singular or plural, printed or
4 stylized, used alone or in combination with any other words, used in caption or
5 text, or used orally or otherwise) or any other reproduction, counterfeit, copy,
6 colorable imitation, or confusingly similar variation of the KNS Marks in
7 Defendants' advertising of their products, including using the KNS Marks in
8 metatags, in keyword or other pay-per click advertising, in any sponsored search
9 engine advertising, in other Internet uses, or in any manner that suggests that
10 Defendants or their products, services, or activities originate from, are affiliated
11 with, are connected to, are associated with, or are sponsored, endorsed, or
12 approved by KNS;

13 (b) manufacturing, importing, advertising, marketing, promoting, supplying,
14 distributing, offering for sale, or selling the Infringing Products or any other
15 products which bear KNS' Brands or any designs confusingly similar thereto
16 and/or products bearing designs that infringe upon the KNS Marks and/or the
17 overall appearance thereof;

18 (c) engaging in any other activity constituting unfair competition with KNS,
19 or acts and practices that deceive consumers, the public, and/or trade, including
20 without limitation, the use of designations and design elements used or owned by
21 or associated with KNS;

22 (d) engaging in any other activity that will dilute the distinctiveness of the
23 KNS Marks;

24 (e) committing any other act which falsely represents or which has the effect
25 of falsely representing that the goods and services of Defendants are licensed by,
26 authorized by, offered by, produced by, sponsored by, or in any other way
27 associated with KNS;

28 3. Ordering Defendants to recall from any distributors and retailers and to deliver to

1 KNS for destruction or other disposition all remaining inventory of all Infringing Products and
2 related items, including all advertisements, promotional and marketing materials therefore, as
3 well as means of making same;

4 4. Ordering Defendants to file with this Court and serve on KNS within thirty (30)
5 days after entry of the injunction a report in writing, under oath setting forth in detail the manner
6 and form in which Defendants have complied with the injunction;

7 5. Ordering an accounting by Defendants of all gains, profits and advantages derived
8 from their wrongful acts;

9 6. Awarding KNS all of Defendants' profits and all damages sustained by KNS as a
10 result of Defendants' wrongful acts, statutory damages, and such other compensatory damages as
11 the Court determines to be fair and appropriate.

12 7. Awarding treble damages in the amount of Defendants' profits or KNS' damages,
13 whichever is greater, pursuant to 15 U.S.C. § 1117(a) and (b);

14 8. In the alternative, awarding statutory damages pursuant to 15 U.S.C. § 1117(c)(1)
15 of up to \$200,000 for each and every use of the KNS Marks or, if the Court finds that
16 Defendants' infringement is willful, awarding statutory damages pursuant to 15 U.S.C. §
17 1117(c)(2) of up to \$2,000,000 for each and every use of the KNS Marks;

18 9. Finding that this is an exceptional case and awarding KNS' attorneys' fees
19 pursuant to 15 U.S.C. §1117(a) and/or 35 U.S.C. § 285;

20 10. Awarding applicable interest, costs, and disbursements;

21 11. Awarding KNS' punitive damages in connection with its claims under California
22 law; and

23 12. Such other relief as may be just and proper.

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2 Respectfully submitted,

3 LAW OFFICES OF JOSHUA R. ENGLE

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5 Dated: December 1, 2015

6 By: 
7 Joshua R. Engle,
8 Attorney for KNS International, LLC

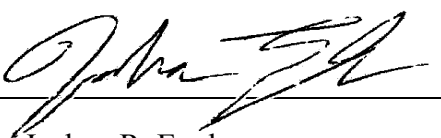
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10 **DEMAND FOR JURY TRIAL**

11 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff KNS
12 International, LLC hereby demands a trial by jury as to all claims in this litigation.

13
14 Respectfully submitted,

15 LAW OFFICES OF JOSHUA R. ENGLE

16
17 Dated: December 1, 2015

18 By: 
19 Joshua R. Engle,
20 Attorney for KNS International,